

REMARKS

Claims 1-33 remain pending in the application.

The Applicants respectfully request the Examiner to reconsider earlier rejections in light of the following remarks. No new issues are raised nor is further search required as a result of the changes made herein. Entry of the Amendment is respectfully requested.

Claims 1-7, 12-21 and 26-29 over Lechleider in view of Bellenger

In the Office Action, claims 1-7, 12-21 and 26-29 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lechleider, U.S. Patent No. 6,091,713 ("Lechleider") in view of Bellenger et al., U.S. Patent No. 6,058,110 ("Bellenger"). The Applicants respectfully traverse the rejection.

Claims 1-7 and 12-15 recite, *inter alia*, determining a suitability of a service line used by a subscriber for supporting DSL service via a combination analog/DSL modem. Claims 16-21 and 26 recite, *inter alia*, program code for determining a suitability of a service line for DSL services via a combination analog/DSL modem. Claims 27-29 recite, *inter alia*, a parameter test module that is adapted to connect to a combination analog/DSL modem to measure at least one parameter of a service line via an analog modem module and a parameter reference module adapted to correlate the measurement by the parameter test module to a suitability for supporting services via a DSL modem module.

The Examiner alleges Bellenger discloses a combination voice band/DSL band modem (Office Action, page 2). The Examiner further alleges that a modem that operates at frequencies used by an ADSL modem matches the definition of an ADSL modem (Office Action, page 3).

The Examiner is correct that Bellenger discloses a combination voice band/DSL band modem. However, Bellenger discloses a modem that operates in both a voice band, from 300 to 3400 Hz, and also in an ADSL band, which extends above 3400 Hz (Abstract). A modem that is able to operate in both an ADSL band and a voice band, allows a choice of operating at a higher data rate without the cost of an ADSL modem (Bellenger, col. 3, lines 1-8). Thus, Bellenger's discloses a combination voice band/DSL band modem.

A modem that is able to transmit at frequencies used by a DSL modem does not make that modem a true DSL modem. As Bellenger acknowledges, such a modem is less costly to produce than a true DSL modem, with a true DSL modem being more complicated than simply utilizing DSL frequencies. Thus, the Examiner's definition of a DSL modem is contrary to even Bellenger's definition of a DSL modem, Bellenger failing to disclose or suggest a combination analog/DSL modem, as recited by claims 1-7, 12-21 and 26-29.

Moreover, even if Bellenger disclosed a combination analog/DSL modem, which as discussed above Bellenger fails to do, "Teachings of references can be combined only if there is some suggestion or incentive to do so." In re Fine, 5 USPQ2d 1596,1600 (Fed. Cir. 1988) (quoting ACS Hosp. Sys. v. Montefiore Hosp., 221 USPQ 929, 933 (Fed. Cir. 1984)) (emphasis in original). Nothing in Lechleider and Bellenger, nor any of the cited prior art, suggests replacing Lechleider analog modem with anything, much less a combination analog/DSL modem, as recited by claims 1-7, 12-21 and 26-29.

Moreover, modifying Lechleider with Bellenger would result in system having two modems, an analog modem and a combination voice band/DSL band modem. A single computer having two modems for a single phone line is nonsensical.

Neither Lechleider nor Bellenger, either alone or in combination, fails to disclose, teach or suggest determining suitability of a service line by a combination analog/DSL modem, as recited by claims 1-7, 12-21 and 26-29.

A benefit of a combination analog/DSL modem is, e.g., testing of a DSL line after DSL service is initiated. If DSL service becomes interrupted after service is initiated, the prior art requires detaching a DSL modem and attaching an analog modem to test a service line. Use of a combination analog/DSL modem would simply require a user to initiate the analog portion to test a service line and report any faults. Once DSL service is restored, the DSL portion is once again initiated to restore DSL service without having to disconnect a modem and reconnect another. The cited prior art fails to disclose or suggest such a benefit.

Accordingly, for at least all the above reasons, claims 1-7, 12-21 and 26-29 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Claims 8-11, 22-25 and 30-33 over Lechleider in view of Bellenger and Vogt

In the Office Action, claims 8-11, 22-25 and 30-33 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Lechleider in view of Bellenger, and further in view of Vogt, III et al., U.S. Patent No. 5,625,667 ("Vogt"). The Applicants respectfully traverse the rejection.

Claims 8-11, 22-25 and 30-33 are dependent on claims 1, 16 and 27 respectively, and are allowable for at least the same reasons as claims 1, 16 and 27.

Claims 8-11 recite, *inter alia*, determining a suitability of a service line used by a subscriber for supporting DSL service via a combination analog/DSL modem. Claims 22-25 recite, *inter alia*, program code for determining a suitability of a service line for DSL services via a combination analog/DSL modem. Claims 30-33 recite, *inter alia*, a parameter test module that is adapted to connect to a combination analog/DSL modem to measure at least one parameter of a service line via an analog modem module and a parameter reference module adapted to correlate the measurement by the parameter test module to a suitability for supporting services via a DSL modem module.

As discussed above, neither Lechleider nor Bellenger, either alone or in combination, fails to disclose, teach or suggest determining suitability of a service line by a combination analog/DSL modem, as recited by claims 8-11, 22-25 and 30-33.

The Office Action relies on Vogt to allegedly make up for the deficiencies in Lechleider and Bellenger to arrive at the claimed invention. The Applicants respectfully disagree.

Vogt appears to disclose a method of measuring characteristics such as resistance, capacitance and foreign voltage on a telephone line (Abstract). A steady state voltage is sampled a number of times to determine the

resistance, capacitance and foreign voltage on the telephone line (Vogt, col. 4, lines 3-16).

Although Vogt discloses testing a telephone line for operating characteristics, Vogt fails to disclose or suggest using a modem to do so, much less a combination analog/DSL modem, as recited by claims 8-11, 22-25 and 30-33.

Neither Lechleider, Bellenger nor Vogt, either alone or in combination, fails to disclose, teach or suggest determining suitability of a service line by a combination analog/DSL modem, as recited by claims 8-11, 22-25 and 30-33.

Accordingly, for at least all the above reasons, claims 8-11, 22-25 and 30-33 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,
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